*tax imposed on a child, are other phase-outs, limitations, or floors on deductions or credits, such as the phase-out of the $25,000 passive loss allowance for rental real estate activities under section 469(i)(3) or the 2 percent of AGI floor on miscellaneous itemized deductions under section 67, affected by the addition of a child's net unearned income to the parent's taxable income?*

A–21. No. A child's net unearned income is not taken into account in computing any deduction or credit for purposes of determining the parent's tax liability or the child's allocable parental tax. Thus, for example, although the amounts allowable to the parent as a charitable contribution deduction, medical expense deduction, section 212 deduction, or a miscellaneous itemized deduction are affected by the amount of the parent's adjusted gross income, the amount of these deductions that is allowed does not change as a result of the application of section 1(i) because the amount of the parent's adjusted gross income does not include the child's net unearned income. Similarly, the amount of itemized deductions that is allowed to a child does not change as a result of section 1(i) because section 1(i) only affects the amount of tax liability and not the child's adjusted gross income.

*Q–22. If a child is unable to obtain information concerning the tax return of the child's parents directly from such parents, how may the child obtain information from the parent's tax return which is necessary to determine the child's tax liability under section 1(i)?*

A–22. Under section 6103(e)(1)(A)(iv), a return of a parent shall, upon written request, be open to inspection or disclosure to a child of that individual (or the child's legal representative) to the extent necessary to comply with section 1(i). Thus, a child may request the Internal Revenue Service to disclose sufficient tax information about the parent to the child so that the child can properly file his or her return.

[T.D. 8158, 52 FR 33579, Sept. 4, 1987; 52 FR 36133, Sept. 25, 1987]

## § 1.2–1 Tax in case of joint return of husband and wife or the return of a surviving spouse.

(a) *Taxable year ending before January 1, 1971.* (1) For taxable years ending before January 1, 1971, in the case of a joint return of husband and wife, or the return of a surviving spouse as defined in section 2(b), the tax imposed by section 1 shall be twice the tax that would be imposed if the taxable income were reduced by one-half. For rules relating to the filing of joint returns of husband and wife, see section 6013 and the regulations thereunder.

(2) The method of computing, under section 2(a), the tax of husband and wife in the case of a joint return, or the tax of a surviving spouse, is as follows:

(i) First, the taxable income is reduced by one-half. Second, the tax is determined as provided by section 1 by using the taxable income so reduced. Third, the tax so determined, which is the tax that would be determined if the taxable income were reduced by one-half, is then multiplied by two to produce the tax imposed in the case of the joint return or the return of a surviving spouse, subject, however, to the allowance of any credits against the tax under the provisions of sections 31 through 38 and the regulations thereunder.

(ii) The limitation under section 1(c) of the tax to an amount not in excess of a specified percent of the taxable income for the taxable year is to be applied before the third step above, that is, the limitation to be applied upon the tax is determined as the applicable specified percent of one-half of the taxable income for the taxable year (such one-half of the taxable income being the actual aggregate taxable income of the spouses, or the total taxable income of the surviving spouse, as the case may be, reduced by one-half). For the percent applicable in determining the limitation of the tax under section 1(c), see § 1.1–2(a). After such limitation is applied, then the tax so limited is multiplied by two as provided in section 2(a) (the third step above).

(iii) The following computation illustrates the method of application of section 2(a) in the determination of the

tax of a husband and wife filing a joint return for the calendar year 1965. If the combined gross income is $8,200, and the only deductions are the two exemptions of the taxpayers under section 151(b) and the standard deduction under section 141, the tax on the joint return for 1965, without regard to any credits against the tax, is $1,034.20 determined as follows:

| | | |
|---|---|---|
| 1. Gross income | $8,200.00 | |
| 2. Less: | | |
| Standard deduction, section 141 | $820 | |
| Deduction for personal exemption, section 151 | 1,200 | 2,020.00 |
| 3. Taxable income | 6,180.00 | |
| 4. Taxable income reduced by one-half | 3,090.00 | |
| 5. Tax computed by the tax table provided under section 1(a)(2) ($310 plus 19 percent of excess over $2,000) | 517.10 | |
| 6. Twice the tax in item 5 | 1,034.20 | |

(b) *Taxable years beginning after December 31, 1970.* (1) For taxable years beginning after December 31, 1970, in the case of a joint return of husband and wife, or the return of a surviving spouse as defined in section 2(a) of the Code as amended by the Tax Reform Act of 1969, the tax shall be determined in accordance with the table contained in section 1(a) of the Code as so amended. For rules relating to the filing of joint returns of husband and wife see section 6013 as amended and the regulations thereunder.

(2) The following computation illustrates the method of computing the tax of a husband and wife filing a joint return for calendar year 1971. If the combined gross income is $8,200, and the only deductions are the two exemptions of the taxpayers under section 151(b), as amended, and the standard deduction under section 141, as amended, the tax on the joint return for 1971, without regard to any credits against the tax, is $968.46, determined as follows:

| | | |
|---|---|---|
| 1. Gross income | $8,200.00 | |
| 2. Less: | | |
| Standard deduction, section 141 | $1,066.00 | |
| Deduction for personal exemption, section 151 | 1,300.00 | 2,366.00 |
| 3. Taxable income | 5,834.00 | |
| 4. Tax computed by the tax table provided under section 1(a) ($620 plus 19 percent of excess over $4,000) | 968.46 | |

(3) The limitation under section 1348 with respect to the maximum rate of tax on earned income shall apply to a married individual only if such individual and his spouse file a joint return for the taxable year.

(c) *Death of a spouse.* If a joint return of a husband and wife is filed under the provisions of section 6013 and if the husband and wife have different taxable years solely because of the death of either spouse, the taxable year of the deceased spouse covered by the joint return shall, for the purpose of the computation of the tax in respect of such joint return, be deemed to have ended on the date of the closing of the surviving spouse's taxable year.

(d) *Computation of optional tax.* For computation of optional tax in the case of a joint return or the return of a surviving spouse, see section 3 and the regulations thereunder.

(e) *Change in rates.* For treatment of taxable years during which a change in the tax rates occurs see section 21 and the regulations thereunder.

[T.D. 7117, 36 FR 9398, May 25, 1971]

### § 1.2–2 Definitions and special rules.

(a) *Surviving spouse.* (1) If a taxpayer is eligible to file a joint return under the Internal Revenue Code of 1954 without regard to section 6013(a) (3) thereof for the taxable year in which his spouse dies, his return for each of the next 2 taxable years following the year of the death of the spouse shall be treated as a joint return for all purposes if all three of the following requirements are satisfied:

(i) He has not remarried before the close of the taxable year the return for which is sought to be treated as a joint return, and

(ii) He maintains as his home a household which constitutes for the taxable year the principal place of abode as a member of such household of a person who is (whether by blood or adoption) a son, stepson, daughter, or stepdaughter of the taxpayer, and

(iii) He is entitled for the taxable year to a deduction under section 151 (relating to deductions for dependents) with respect to such son, stepson, daughter, or stepdaughter.